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In re Application of
BIEMANS et al. :
Application No.: 10/525,889 :
PCT No.: PCT/EP2003/010085 : DECISION
Int. Filing Date: 28 August 2003 :
Priority Date: 30 August 2002 :
Attorney Docket No.: VB60395 :
For: METHOD FOR REFOLDING :
NEISSERIAL NSPA PROTEIN :

This decision is in response to applicants' "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181" filed in the United States Patent and Trademark Office (USPTO) on 03 August 2006. No petition fee is required.

BACKGROUND

On 28 August 2003, applicants filed international application PCT/EP2003/010085, which designated the United States and claimed a priority date of 30 August 2002. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 11 March 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 28 February 2005.

On 25 February 2005, applicants filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee.

On 14 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) and the surcharge under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date were required. The Notification set a two-month extendable period for reply.

On 21 July 2006, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DE/EO/909) indicating that the application was abandoned as to the United States of America for failure to reply to the NOTIFICATION OF MISSING REQUIREMENTS mailed 14 July 2005.

On 03 August 2006, applicants filed the instant "PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR 1.181". The petition was accompanied by, *inter alia*, copies of two declarations of inventors.

DISCUSSION

The petition states that a response was submitted via facsimile transmission to the USPTO on 03 October 2005 and includes a copy of the purported response. However, petitioner has not established that such a response was filed on that date. The petition states that a "copy of the Auto-Reply facsimile transmission confirmation" is included. However, no such copy appears in the application file.

It is also noted that the declarations of inventors submitted 03 August 2006 do not comply with 37 CFR 1.497(a)-(b) because not all of the inventors have executed the declarations. (The copy of the second declaration of inventors is missing page 3). Additionally, the complete declaration filed 03 August 2006 fails to comply with 37 CFR 1.497(a)-(b) because it does not list the correct inventorship. There is a difference in names in one of the named inventors between the published international application (Jan Tommassen) and the declaration of inventors (Johannes Petrus Maria Tommassen). Because this difference in names is more than a mere typographical error or a phonetic misspelling of applicant's legal name, a proper petition under 37 CFR 1.182 is required in order to resolve the matter. Such a petition must be accompanied by the requisite petition fee of \$400 as well as a statement from the inventor. This statement should set forth that he is a joint inventor of the subject matter of the present application and should set forth the circumstances surrounding the difference in names on the international application and the declaration.

It is also noted that paragraph 5 of the petition states that "no Notification was received in this case". However, the copy of the submission purportedly filed 03 October 2005 states that the submission "is in response to the 'Notification of Missing Requirements' mailed 14 July 2005".

CONCLUSION

The petition under 37 CFR 1.181 is **DISMISSED** without prejudice for the reasons set forth above.

The application is abandoned for the reasons set forth in the NOTIFICATION OF ABANDONMENT mailed 21 July 2006.

If reconsideration on the merits of this petition is desired, a proper reply must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." No additional petition fee is required. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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